LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 3 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 456

THE GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL., *Petitioners*

v.

JOHN J. KING, EARL N. ANDERSON, ET AL., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PLATO E. PAPPS
1300 Connecticut Avenue, N. W.
Washington 6, D. C.

EDWARD J. HICKEY, JR.
JAMES L. HIGHSAW, JR.
620 Tower Building
Washington 5, D. C.

Counsel for Petitioners

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington 5, D. C.

JOHN PAUL JENNINGS
JENNINGS, HAID, GARTLAND & TILLY
345 World Trade Center
San Francisco 11, California

September 3, 1964

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement	3
Reasons for Granting Writ:	
1. The petition presents for adjudication by this Court questions of substantial importance in the interpretation of the LMRDA	12
2. The decision below produces unreasonable and discriminatory results	15
3. The decision of the Court of Appeals is in conflict with the decisions of other Circuits and of other Federal courts	17
4. The decision of the Court of Appeals is erroneous	20
Conclusion	26
Appendix A	1a
Appendix B	2a
Appendix C	15a

INDEX TO CITATIONS

CASES:

Bennett v. Hoisting and Portable Engineers Local 701, 207 F. Supp. 361 (U.S.D.C. D. Or., 1960) 19

Cox v. Hutcheson, 204 F. Supp. 442 (U.S.D.C. S.D. Ind., 1962) 19

Jackson v. The Martin Company, 180 F. Supp. 475, 480 (U.S.D.C. D. Md., 1960) 19, 20

King, et al. v. International Association of Machinists, et al., 215 F. Supp. 351 (N.D. Calif., 1963) 2, 10

Mamula v. United Steelworkers of America, 304 F. 2d 108 (3rd Cir., 1962) 25

Page

Rinker v. Local Union No. 24 of Amalgamated Lithographers of America, 201 F. Supp. 204, 206 (U.S. D.C. W.D. Penna., 1962), appeal dismissed 313 F. 2d 956 (3rd Cir., 1962) 19

Salzhandler v. Caputo, 316 F. 2d 445 (1963), *cert. den.* — U.S. — (December 9, 1963) 18, 19

Sheridan v. United Brotherhood of Carpenters and Joiners of America, Local No. 626, 194 F. Supp. 664 (U.S.D.C. D. Del., 1961); 306 F. 2d 152, 156, 157 (3rd Cir., 1962) 17, 18, 19, 22

Strauss v. International Brotherhood of Teamsters, Etc., 179 F. Supp. 297, 300 (U.S.D.C. E.D. Penna., 1959) 19, 20, 22, 23

The Grand Lodge of The International Association of Machinists, et al. v. John J. King, Earl N. Anderson, et al. (Case No. 18,542), 9th Cir., 1964 1

STATUTES:

Judicial Code, 28 U.S.C.A., Sections 1254(1) and 1292(b) 2, 11, 14

Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A., Section 401 et seq.) .. 2, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

National Labor Relations Act (29 U.S.C.A., Section 151 et seq.) 15

MISCELLANEOUS:

Conference Report (H.R. Rep. No. 1147, 86th Cong., 1st Sess., 31 (1959)), accompanying S. 1555, 86th Cong., 1st Sess.—Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, Vol. I, page 935; 105 Cong. Rec. 16415 (daily ed. Sept. 3, 1959) 23

H.R. Rep. No. 741, 86th Cong., 1st Sess. (1959) 25

S. 1555, 86th Cong., 1st Sess. (1959) 25

Vol. II, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, pages 1097, 1433 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

THE GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL., *Petitioners*

v.

JOHN J. KING, EARL N. ANDERSON, ET AL., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners, The Grand Lodge of The International Association of Machinists (hereinafter referred to as the "IAM"), and Messrs. Albert J. Hayes, Elmer E. Walker, Paul L. Siemiller, Joseph W. Ramsey, Harold J. Gibson, Fred H. Coonley, Ernest R. White, George L. Watkins and George P. Schollie, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the case of *The Grand Lodge Of The International Association of Machinists, et al.* v. *John J. King, Earl N. Anderson, et al.* (Case No. 18,542), on June 23, 1964 (Appendix A hereto).

OPINIONS BELOW

The opinion of the Court of Appeals, printed in Appendix B hereto, is not yet reported. The opinion of the United States District Court for the Northern District of California, Southern Division (R. 87), is reported in 215 F. Supp. 351.

JURISDICTION

The judgment of the Court of Appeals was entered on June 23, 1964 (Appendix A). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

QUESTIONS PRESENTED

In the opinion of the petitioners, the following question is presented:

1. Do Sections 101(a)(1) and 101(a)(2) of the Labor-Management Reporting and Disclosure Act of 1959 restrict the rights of a labor organization to terminate an employment relationship between the organization and a member where membership rights in the organization are not disturbed?

STATUTES INVOLVED

The statutory provisions involved are Sections 101 (a)(1), 101(a)(2), 101(a)(5), 102, 401(e), 402, 403 and 609 of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter referred to as the "LMRDA"), 73 Stat. 519 (29 U.S.C.A., Sections 411 (a)(1), 411(a)(2), 411(a)(5), 412, 481(e), 482, 483 and 529). They are printed in Appendix C, hereto.

STATEMENT

This case arose out of the action of Albert J. Hayes, International President of the IAM, in terminating, effective July 31, 1961, the employment of each of the respondents Messrs, Earl N. Anderson, John J. King, Compton Z. Lindsey, Ashby C. McGraw, Edward Skagen, and Charles B. Truax, as Grand Lodge Representatives of the IAM (R. 37-42).[1]

Each of these respondents held the position of Grand Lodge Representative pursuant to appointment by the International President of the IAM under the provisions of Article VI, Section 2, of the Constitution of the International Association of Machinists: (R. 6, 7, 188)[2]

> "The I.P. shall be the chief organizer of the G.L. and shall have full control over all G.L.Rs. and of all organizing. He shall provide suitable literature for organizing purposes and have the authority when conditions warrant to appoint G.L.Rs. and assign them to such localities and for such particular terms and duties as shall be for the best interests of the I.A.M. All of which shall be subject to the approval of the E.C."[3]

---

[1] Reference is to pages of the certified record filed in this Court.

[2] The Constitution of the IAM which was attached as Exhibit 1 to the affidavit of Elmer E. Walker submitted in support of the motion of petitioners to the District Court (R. 55) has been included in the certified record filed in this Court (R. 188). The cited provision of the IAM Constitution appears at page 19 of that document.

[3] The abbreviation I.P. in the above-quoted provision of the IAM Constitution refers to the International President; the abbreviation G.L. refers to the Grand Lodge of the IAM; the abbreviation E.C. refers to the Executive Council of the IAM; and the abbreviation G.L.Rs. refers to Grand Lodge Representatives.

The appointment of each Grand Lodge Representative is made annually for a yearly term (R. 36, 49). Each such Representative, including the respondents, received on January 1, 1961, a credential certifying his appointment, "to remain in effect from January 1, 1961 to January 1, 1962 unless revoked." A copy of these credentials is attached to the complaint as Exhibit "A" (R. 35, 36, 49). The front of the credential bore the printed signatures of Elmer E. Walker, General Secretary-Treasurer of the IAM, and Albert J. Hayes, International President of the IAM. The front of the credential read as follows: (R. 35, 36)

> "This is to Certify that John J. King is duly authorized to represent the Grand Lodge of the International Association of Machinists in all matters to which he may be assigned and shall be the recognized authority in all questions subject to the constitution of the International Association of Machinists. This credential to remain in effect from *January 1, 1961 to January 1, 1962* unless revoked.
>
> Given under our hand and seal of the Grand Lodge this *1st* day of *January 1961.*"

The back of each such credential also bore the printed signatures of Messrs. Walker and Hayes, and read as follows: (R. 36)[4]

> "This is to Certify that John J. King Card No. I 23256 has been elected or appointed in accordance with the laws of the International Associa-

[4] The particular credential attached to the complaint quoted herein is the credential issued to John J. King, one of the respondents. Identical credentials were issued to each of the respondents on January 1, 1961 (R. 8).

tion of Machinists and the title of his office is designated as:

Grand Lodge Representative".

On June 15, 1961, Albert J. Hayes, International President of the IAM, wrote a letter to each of the respondents notifying him that his services as "Grand Lodge Representative are being terminated as of July 31, 1961" (R. 37-42, 49). This letter read as follows: (R. 37)

"Dear Sir and Brother:

This is to notify that your services as a Grand Lodge Representative are being terminated as of midnight July 31, 1961.

According to official records at headquarters, you are entitled to two weeks' vacation based upon your service in the year 1960, and one week and one day's vacation based upon your service for the year 1961. Accordingly, you will be relieved of all of your assignments as of midnight July 6, 1961.

It is requested that you turn over to General Vice President E. R. White, or anyone else whom he may designate, all documents, papers, files, letters, etc. which are related to your assignments."

The same letter was written to each of the other respondents terminating their services as Grand Lodge Representatives (R. 15, 37-42, 49).[5]

Mr. Hayes took no action against any of the respondents with respect to their membership rights. They have continued as full-fledged members of the IAM

[5] The specific letter quoted is that written to respondent Earl N. Anderson. The termination date was the same for each individual, but the date on which such individuals were relieved of assignments varied in accordance with their accrued vacation time (R. 37-42).

free to exercise all of the rights guaranteed by Section 1 of the LMRDA.

On July 30, 1962, the respondents filed their complaint in the District Court against the petitioners IAM and Messrs. Hayes, Walker, Siemiller, Ramsey, Gibson, Coonley, White, Watkins and Schollie, who are officers of that organization.[6]

The complaint asked the District Court to issue a mandatory injunction against the petitioners restoring the respondents to their positions as Grand Lodge Representatives and to all rights and benefits of said positions as would have accrued had their services in such jobs not been terminated (R. 32, 33). The complaint also asked the District Court to enjoin the petitioners from terminating the employment of respondents with the IAM or expelling them from membership in the organization or imposing any discipline upon them without authorization obtained from that Court (R. 33). The complaint further requested that the District Court order the petitioners to accept any future applications made by respondents Lindsey and McGraw for pensions as Grand Lodge Representatives (R. 33, 34). Finally, the complaint asked that special, general, and punitive damages be awarded to the respondents (R. 34).

The alleged basis for this relief was set forth in six counts in the complaint. The first three counts (R. 4-29) asserted, in substance, that the termination of the services of respondents as Grand Lodge Representatives of the IAM was a form of discipline imposed

[6] The complaint also named as a defendant Mr. J. C. McGlon, General Vice President of the IAM. This defendant died on December 10, 1963.

upon them because of their participation in intra-organizational politics through active support of Mr. Roy M. Brown in his unsuccessful candidacy for the office of General Secretary-Treasurer of IAM in 1961, whose views of union policy, in opposition to the policy of the duly elected officers of the IAM, were shared by respondents. It was therefore asserted that the petitioners had violated Sections 101(a)(1), 101(a)(5), 401(e) and 609 of the LMRDA. Count 2 of the complaint (R. 27-29) alleged additional discipline in violation of Section 609 of the LMRDA against respondent Skagen by the filing of claimed spurious union charges and against respondents Lindsey and McGraw by the withholding of pensions to which they were entitled as Grand Lodge Representatives.

The complaint (R. 4, 27, 29) bases the jurisdiction of the District Court over counts 1, 2 and 3 upon Section 102 of the LMRDA and Title 28, Section 1331 of the Judicial Code.

The remaining three counts of the complaint (R. 30-32) alleged that the actions of defendants constituted a violation of laws of the state of California giving rise to claims which fall within the pendent jurisdiction of the District Court (R. 30-32).

On October 15, 1962, the petitioners filed with the District Court a motion to dismiss the complaint or in the alternative to grant them summary judgment. The grounds of the motion to dismiss were (1) that the District Court lacked jurisdiction over the subject matter of the complaint, and (2) that the complaint failed to state a claim upon which relief could be granted. The alternative motion for summary judgment was based on the ground that there was no genuine issue as to

any material fact and that the only controversy between the parties involved legal conclusions to be drawn from the facts (R. 46, 47).

There was attached to the motion as Appendix A an affidavit of Mr. Elmer E. Walker, General Secretary-Treasurer of IAM (R. 48-55). The affidavit makes clear that, while the International President of IAM had terminated the employment of respondents as Grand Lodge Representatives, they had not been deprived of membership in the organization nor had their exercise of membership rights been subject to interference.[7] The affidavit also makes clear (R. 52, 53) that retirement of respondent Lindsey at age 60 was entirely permissive with the Executive Council of IAM, that such retirement was not ordinarily granted before 65 in the absence of disability, and that Mr. Lindsey had accrued vested pension rights available at 65. The affidavit also attached correspondence showing that respondent McGraw had not been denied retirement for disability from his position as a business representative (R. 53, 54, 58-67).

On December 6, 1962, the respondents filed a cross-motion for summary judgment on the ground that there was no genuine issue as to any material fact concerning liability and that respondents were entitled to judgment as a matter of law (R. 67, 68). There were attached to this motion affidavits of each of the respondents (R. 68-87).

---

[7] Affiant Walker had subsequently brought charges against respondent Skagen for false and malicious statements in violation of the IAM Constitution. These charges required a trial under IAM governing laws and the United States District Court for the Southern District of California, Central Division, on August 23, 1962, refused to enjoin the processing of such charges within the organization (R. 51, 55-57).

A comparison of the complaint, the affidavit of Mr. Walker, and the affidavits of respondents reveals that they were agreed that respondents served as Grand Lodge Representatives for varying periods specified in th complaint pursuant to appointment made by the International President of IAM, pursuant to the provisions of Article VI, Section 2 of the constitution of the organization; that each year they were issued a credential in the form set forth in Exhibit A to the complaint to remain in effect for one year "unless revoked"; that respondents had been issued such a credential on January 1, 1961, and that on June 15, 1961, their services were terminated by the International President of IAM, effective July 31, 1961. The affidavits of respondents also did not contest the showing in paragraphs 10 and 11 of the Walker affidavit (R. 52, 53) that no pension rights of respondents Lindsey and McGraw had been violated.

In addition, the affidavits of the respondents stated in substance that no coercion or pressure was brought upon them by the IAM or the members of the Executive Council thereof with respect to the exercise of their votes and the expression of their views in the election for IAM officers in 1961 (R. 70, 73, 77, 80, 83, 86).

The basic question presented to the District Court by the cross-motions was the legal issue of whether the LMRDA (also referred to in the course of the proceeding by its popular name of the Landrum-Griffin Act) was applicable to the employment relationship between the IAM and the respondents arising from the job of Grand Lodge Representative held by each of the respondents and restricted the IAM and its officers in terminating respondents' services in such employment.

It was the contention of the petitioners that the LMRDA did not apply to the employment relationship involved and did not in any way restrict or limit the right of the IAM to terminate respondents' services as employees of the organization and that, therefore, the complaint failed to state a claim over which the District Court had jurisdiction or with respect to which it could grant relief (R. 46, 106-118).

On the other hand, it was the position of respondents that the LMRDA restricted the IAM and its officers both with respect to the grounds for terminating their employment relationship with the IAM and the procedures to be followed in effecting such a termination (R. 117-144).

The parties were in agreement that the question of whether the District Court had jurisdiction over counts 4, 5, and 6 of the complaint, which were based on pendent jurisdiction, was dependent upon the applicability of the LMRDA to the actions of petitioners (R. 115, 116, 125).

On February 5, 1963, the District Court issued a memorandum opinion and order denying the motion of the petitioners. This opinion and order also denied the cross-motion of the respondents on the basis that the petitioners should have an opportunity to rebut the prima facie showing of liability made by the complaint. *King, et al.* v. *Grand Lodge of IAM, et al.*, 215 F. Supp. 351 (R. 87-96). The District Court concluded as a matter of law that Section 101(a)(5) of the LMRDA (29 U.S.C.A., Section 411(a)(5)) was applicable to and restricted the action of the IAM and its International President in terminating the employment of the respondents as Grand Lodge Rep-

resentatives of that organization. The District court further concluded that since it found that the respondents' rights under Section 101(a)(5) were violated, it was not necessary to consider whether or not the action of the IAM and its International President also violated other provisions of the LMRDA as alleged in the complaint or to consider questions of pendent jurisdiction raised by counts 4, 5, and 6 of the complaint (R. 96).

On March 8, 1963, the District Court issued a supplemental memorandum in which it found that (1) its prior order denying the motions involved a controlling question of law as to which there is a substantial ground for difference of opinion, and that (2) an immediate appeal from the order would materially advance the ultimate termination of the litigation (R. 97, 98). On the same date the District Court entered its final order (R. 100, 101) dismissing the motion of the petitioners and the cross-motion of the respondents, which also included a statement of the Court's conclusions under 28 U.S.C.A., Section 1292(b).

Thereafter, the petitioners applied to the Court of Appeals pursuant to Rule 38 of that Court's rules for permission to take an immediate appeal pursuant to the provisions of 28 U.S.C.A., Section 1292(b) from the order of the District Court denying their motion to dismiss the complaint (R. 152-178). The respondents filed a statement with the Court of Appeals urging that it grant the application (R. 179-181). On March 25, 1963, the Court of Appeals granted the application of the petitioners and the appeal was duly docketed (R. 101, 182).

On June 23, 1964, the Court of Appeals issued its opinion and judgment affirming the order of the Dis-

trict Court (Appendix A and Appendix B hereto). The Court of Appeals disagreed with the conclusion of the District Court that Section 101(a)(5) was applicable to and limited the action of the IAM and its International President in terminating the jobs of the respondents as Grand Lodge Representatives. It was the opinion of the Court of Appeals that Congress did not intend such action to apply to removals or suspensions from union office (Appendix B, pages 2a-5a). However, the Court of Appeals further concluded that the complaint set forth a valid cause of action under Sections 101(a)(1), 101(a)(2) and 609 of the statute and that Section 102 thereof authorized respondents to bring an action in the District Court for appropriate relief (Appendix B, page 5a).

The decision of the Court of Appeals did not reach the respondents' alternate contention that the action of the IAM and its International President violated rights guaranteed by Section 401(e) of the statute (Appendix B, page 13a, footnote 32).

REASONS FOR GRANTING WRIT

1. The petition presents for adjudication by this Court questions of substantial importance in the interpretation of the LMRDA

The Court of Appeals holds that Sections 101(a)(1) and 101(a)(2) restrict the right of a union to terminate the jobs of any of its employees who also happen to be members of the union even though such action does not affect their membership. This decision extends the scope of those Sections far beyond the bounds embraced by prior interpretations and raises basic questions as to whether the "Bill of Rights" provisions of Title I of the LMRDA were intended by Con-

gress to protect jobs with unions as distinguished from membership in unions.

Moreover, this result was reached only by methods of statutory construction that are novel and which involve giving a different meaning to the same language in different sections of the statute and even within the same section.

The District Court found that the action of petitioners violated Section 101(a)(5) of the LMRDA (R. 87-96). However, the Court of Appeals in deference to the "patent legislative intent" to wholly exclude suspension or removal from union office from the category of union action to which Section 101(a)(5) applied rejected the District Court's view of the application of that Section to the action of petitioners (Appendix B, pages 4a-5a). At the same time the Court of Appeals split Section 1 asunder and held that Section 101(a)(1) and Section 101(a)(2) were applicable to the IAM in terminating respondents' jobs with the union in spite of the inapplicability of Section 101(a)(5) to that action (Appendix B, page 5a). This necessitated a conclusion that Sections 101(a)(1) and 101(a)(2) meant something different when they spoke of the rights of a member than did Section 101(a)(5) when it restricted disciplinary actions against members. It also necessitated the Court of Appeals holding that the words "otherwise disciplined" in Section 101(a)(5) meant something different than the words "otherwise discipline" in Section 609.

The Court of Appeals recognized that this approach presented difficulties "for it is natural to suppose that within a single statute the same words will be used with the same meaning" (Appendix B, page 8a).

This extension of the scope of the statute, the illogical splitting of sections within the statute, and the ascribing of different meanings to identical language in different sections necessary to that result all require that this Court review the decision of the Court of Appeals.

The question of whether Sections 101(a)(1) and 101(a)(2) of the LMRDA are intended to protect job rights as distinguished from membership rights is of basic importance in light of the clear Congressional intent recognized by the Court of Appeals to exclude other than the membership relation from the coverage of Section 101(a)(5) and the further fact that Congress has long recognized in the administration of the affairs of the Federal government that participation in intra-organizational politics is a threat to good administration.

The District Court recognized that the case presented a substantial question in the interpretation and application of the LMRDA when it made the findings under Section 1292(b) of the Judicial Code (28 U.S.C.A., Section 1292(b)) to enable the petitioners to apply to the Court of Appeals for permission to take an immediate appeal from the District Court's holding. The respondents themselves recognized the substantial nature of the issues involved by supporting petitioners' application to take an immediate appeal. The Court of Appeals gave further recognition to the importance of the issues involved by granting the application for an immediate appeal.

2. The decision below produces unreasonable and discriminatory results

The interpretation and application of Sections 101 (a)(1) and 101(a)(2) of the LMRDA embraced by the decision below produces such unreasonable and discriminatory results as to require this Court's review of that decision.

The decision below applies to unions a restriction in dealing with their employees imposed on no other class of employer. That, in and of itself, is a type of discrimination that should not be countenanced unless it is perfectly clear that such was the intent of Congress.

As a result of the Court of Appeals decision, all clerical, custodial, professional, or other classes of employees of a labor organization subject to the LMRDA can acquire the protection of Title I of that statute simply by joining the labor organization. The labor organization is then unable to terminate a job of an employee of the organization such as for engaging in political activity within the organization, no matter how disruptive this activity may be to the sound administration of affairs of the union or how destructive to the morale of employees of the union. Nor do the unreasonable consequences of the decision below end with this threat to good administration of labor organizations. It also produces substantial discrimination between employees of those organizations. Those employees of a labor organization who are not also members of the organization would have only such rights as flow out of their employment contract or out of the National Labor Relations Act, as amended (29 U.S.C.A., Section 151 et seq.).

On the other hand, their fellow employees who were union members, would acquire rights under the LMRDA with respect to their jobs. Thus, one elevator operator would be protected against the termination of his job by the LMRDA and the operator in the next elevator would not. One typist would have such job protection while her fellow employee at the next desk would not. One lawyer employed on the staff of the labor organization would have such job protection while his colleague would not. In cases where a union employee was represented by another union, such as the office workers' organization, and was a member thereof, the employee could not end such discrimination by joining the union by which he was employed since most union governing laws prohibit dual membership. It is difficult to envisage a more discriminatory application of the statute or one which is more destructive of the morale of employees of labor organizations.

Such a result clearly should not be left standing without review by this Court.

The decision of the Court of Appeals tacitly recognized the unreasonable and discriminatory results produced when it stated in a caveat that the reasonable rules and regulations exceptions in Section 101(a)(1) and Section 101(a)(2) may well permit a union to adopt the principle of required political neutrality as a sound element of efficiency in the administration of union affairs through the promulgation of a regulation imposing reasonable limitations upon the political activity of union job holders (Appendix B, page 12a). However, this caveat has no force and effect and is grounded upon the assumption that Sections 101(a)(1) and 101(a)(2) are applicable to the relations between a union and its employees where such employees are also union members. It is submitted that the in-

clusion of this caveat in the Court of Appeals decision constitutes a further recognition by that Court of the substantial importance of the issue before it and introduces a further element of confusion into the interpretation and application of the statute which should be clarified by this Court's review of the decision below. This Court can then once and for all make clear to labor organizations and their employees the precise limits of Title I of the statute so that such labor organizations will be able to plan the administration of their organizations accordingly. The recognition by the Court of Appeals that "active partisan participation by job-holders in intra-organizational politics is a threat to good administration" is simply a recognition of what has long been accepted in the running of any organization, governmental or private, and raises questions of such importance that this Court should review and determine what labor organizations may or may not do under the statute with respect to their employees who pose such a threat to the sound administration of their affairs.

3. The decision of the Court of Appeals is in conflict with the decisions of other Circuits and of other Federal courts

The decision below is in direct conflict with the decision of the Third Circuit in *Sheridan* v. *United Brotherhood of Carpenters and Joiners of America, Local No. 626,* 306 F. 2d 152 (1962). In this case, there was before the Federal courts a suit by a business agent of a union, who had been removed from office before the expiration of his term, seeking reinstatement to his position and recovery of back wages and employment benefits. The District Court held that the plaintiff, having brought about the arrest and prosecution of another union member, had exercised rights granted him by Section 101(a)(4) of the LM-

RDA and that the union, by removing plaintiff from office because he had exercised this right, had disciplined him in violation of Section 609. *Sheridan* v. *United Brotherhood of Carpenters and Joiners of America, etc.*, 194 F. Supp. 664 (U.S.D.C. D. Del., 1961). On appeal, the Third Circuit reversed. Circuit Judge Kalodner wrote the opinion of the Court, holding that the complaint failed to state a cause of action upon which relief could be granted because the LMRDA does not apply to the employment relationship between a union and its employees or a union-officer relationship. The conclusion of this opinion (306 F. 2d at 157) was that "neither under the 'Bill of Rights' provisions of Title I, nor under Section 609, proscribing disciplinary sanctions against union members, is plaintiff's status as business agent protected by the Act. It is the union-members relationship, not the union-officer or union-employee relationship, that is protected." The Court below was of the view that the Third Circuit decision did not conflict with the present decision because Circuit Judge Kalodner's opinion was not joined in by Circuit Judge Hastie, who concurred in the result on a different ground, or by Circuit Judge McLaughlin, who dissented (Appendix B, page 13a, footnote 31). However, there can be no doubt that the opinion of Circuit Judge Kalodner, which was issued as the opinion of the Third Circuit, was diametrically opposed in its interpretation of Title I of the LMRDA to the decision of the Court of Appeals here involved. This conflict should be clarified by this Court.

The opinion of the Court of Appeals cites the decision of the Second Circuit in *Salzhandler* v. *Caputo*, 316 F. 2d 445 (1963), *cert. den.* ... U.S. ... (December 9, 1963), as supporting its view that Title I of the LMRDA extends to an employment relationship be-

tween a union and a member (Appendix B, page 7a, footnote 14). However, the action of the union in that case was directed specifically at various membership rights of the individual involved and prohibited him for a period of five years from participating in any affairs of the union. This decision has no applicability to the situation in which the union action is to terminate an employment relationship with the union. In any event, when the *Caputo* decision is considered in the light of the *Sheridan* case and the District Court decisions cited below, it merely serves to emphasize the conflicting views of the Federal courts on the scope of Title I, which should be clarified by this Court.

In addition, there are District Court decisions which are in direct conflict with the decision below. *Bennett* v. *Hoisting and Portable Engineers Local 701*, 207 F. Supp. 361 (U.S.D.C. D. Or., 1960); *Cox* v. *Hutcheson*, 204 F. Supp. 442 (U.S.D.C. S.D., Ind., 1962); *Rinker* v. *Local Union No. 24 of Amalgamated Lithographers of America*, 201 F. Supp. 204 (U.S.D.C. W.D. Penna., 1962), appeal dismissed 313 F. 2d 956 (3rd Cir., 1962); *Jackson* v. *The Martin Company*, 180 F. Supp. 475 (U.S.D.C. D. Md., 1960); *Strauss* v. *International Brotherhood of Teamsters, Etc.*, 179 F. Supp. 297 (U.S.D.C. E.D. Penna., 1959). In each of these cases the court held that provisions of Title I and of Section 609 applied only to actions directed against the union-member relationship.

Thus, in the *Rinker* case, the District Court stated as follows: (page 206)

> "In short, this statute deals with the union-member relationship and in no way supports jurisdiction of a suit involving the employer-employee relationship."

In the *Jackson* case, the District Court held that Title I of the statute deals with union-member relationships and not with union-employee relationships. The Court spoke as follows on this point: (page 480)

> "However, Title I of the Act (Subchapter 2 in the 1959 Supp. to 29 U.S.C.A., entitled 'Bill Of Rights Of Members Of Labor Organizations'), 29 U.S.C.A. §§ 411 to 415, deals with the union-member relationship, not with the union-officer or union-employee relationships."

In the *Strauss* case, the District Court reached the same conclusion as follows: (page 300)

> "In short, this Title deals with the *union-member* relationship and in no way supports jurisdiction of a suit involving the *employer* (union)-*employee* (business agent) relationship which is the essence of the present suit. Such a case turns more properly on the common law of employment contracts, or employment 'status' as a property right, matters which are outside the scope of Title I." (Emphasis theirs.)

It is thus apparent that there is throughout the Federal judiciary a widespread view that Title I of the LMRDA does not protect the job rights of an employee of a labor organization, who also happens to be a member of that organization, contrary to the view expressed by the decision below. It is submitted that this conflict of views in the interpretation and application of the statute should be resolved by this Court.

4. The decision of the Court of Appeals is erroneous

The decision of the Court of Appeals is predicated upon an erroneous assumption as to the position of the petitioners with respect to the interpretation and application of the LMRDA. That decision (Appendix B, page 6a) states that it is the position of defendants

(i.e. petitioners) that rights protected by Title I of the Act do not extend to members who are also officers of the union. The decision then goes on to conclude that Sections 101(a)(1) and 101(a)(2) apply to officer-members (Appendix B, pages 6a-7a), because to "exclude officer-members from their coverage would deny protection to those best equipped to keep union government vigorously and effectively democratic."

The petitioners have not and do not now contend that Sections 101(a)(1) and 101(a)(2) of the LMRDA are not applicable to officer-members of a union or to members of a union who are also employees of the union. The petitioners have always recognized that these sections of the statute would operate to protect the membership rights of all union members whether they are simply members, also officers, or also employees of the union. It has been and is the position of the petitioners that Title I of the LMRDA is not applicable to and does not restrict the union as to action which it might take with respect to the employment relationship between the union and its employees which is not directed at and does not affect their membership rights. It is also the position of the IAM that the statute is not applicable to protect the jobs of the respondents if they be considered as officers of the union and not merely employees as they were regarded by that organization (R. 49).[8]

---

[8] It should be observed that the complaint (R. 33) describes the relationship of the respondents to the IAM through their holding of the positions as Grand Lodge Representatives as an employment relationship. Their counsel in the proceedings before the District Court similarly described the relationship. Thus, counsel continuously referred to respondents as employees of the IAM (R. 118, 119, 128). The IAM recognized the respondents as "supervisory employees" (R. 49).

The decision below extending the protection of Section 101 and Section 609 of the LMRDA to the relationship between an employee and his employing union or between the union-officer relationship is contrary to the statutory language. The rights which are created by Section 101 are described as the rights of "every member" or of "any member". They are all rights of membership and do not cover any right to hold an office or a job with a union. This limitation of the language of Section 101 has been pointed out by Federal courts on numerous occasions. Thus, in *Sheridan* v. *United Brotherhood of Carpenters and Joiners of America, Local No. 626,* 306 F. 2d 152 (3rd Cir., 1962), Circuit Judge Kalodner, speaking of the language of Title I of the LMRDA, stated as follows: (page 156)

> "This title captioned 'Bill of Rights of Members of Labor Organizations', and particularly Section 101, are designed to protect the rights of union members. The rights are repeatedly described as the rights of 'any member' or 'every member'. No mention is made of the rights of union officers or employees."

Again, the District Court in *Strauss .. International Brotherhood of Teamsters, Etc.,* 179 F. Supp. 297 (U.S.D.C. E.D. Penna., 1959), spoke as follows with respect to the statutory language: (page 300)

> "Upon careful reading of the provisions of Title I, it is clear that no such right is encompassed by any section of that Title. Without entering into a detailed discussion of each of its provisions, we observe that this part of the Act deals with (and is directed toward) the *membership in general* and their relationship, *as members,* with their union. The rights which are created are repeatedly referred to as 'the right of any

> member' or 'the right of every member'. The rights themselves are internal civil and political rights such as the right to vote in elections § 101 (a)(1), to nominate candidates § 101(a)(1), to participate in deliberation of issues § 101(a)(1), to freedom of speech and assembly § 101(a)(2), to participate in the fixing of dues, initiation fees and assessments § 101(a)(3), the right to due process in disciplinary actions resulting in fine, suspension, expulsion, or other discipline § 101(a) (2, 5), and the right to copies of collective bargaining agreement § 104." (Emphasis theirs.)

The decision below is also contrary to the legislative history of Title I. That legislative history indicates very clearly that it was not the intention of Congress in the adoption of Section 101(a)(5) to protect any rights of union members other than their membership rights.[9] The decision below recognizes the persuasive effect of this legislative history but holds, in substance, that it is applicable only to Section 101(a)(5) and that it does not affect the interpretation and application of Sections 101(a)(1) and 101(a)(2) of the LMRDA. However, the petitioners submit that it is not a sound construction of the statute to hold that Congress did not intend to require a labor organization to grant a hearing before terminating the position of an officer of the union or the job of an employee who is also a member and at the same time to say that 101 (a)(1) and 101(a)(2) do not permit the termination at all. The cited legislative history shows that the reason for not making 101(a)(5) applicable to union

---

[9] Conference Report (H.R. Rep. No. 1147, 86th Cong., 1st Sess., 31 (1959)), accompanying S. 1555, 86th Cong., 1st Sess.—Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, Vol. I, page 935; 105 Cong. Rec. 16415 (daily ed. Sept. 3, 1959).

actions other than action taken against membership rights was a recognition of the necessity of permitting a union to take summary action to remove an officer in various circumstances. The same considerations would be applicable to termination of a mere employment relationship, particularly of employees handling money or employees in positions of confidence or trust such as respondents. This purpose is completely defeated if the union is blocked by Sections 101(a)(1) and 101(a)(2) from taking any action at all.

The only provision of the LMRDA which contains any language which can be cited as possibly protecting the rights asserted by the respondents in this case is not Sections 101(a)(1) or 101(a)(2) but Section 401 (e) which provides that every union member in good standing shall have the right, among other things, to "support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof." The complaint (R. 5, 15, 28) alleged that the actions of the petitioners violated the rights of the respondents under this Section. Neither the decision of the District Court (R. 87-96) nor of the Court of Appeals (Appendix B, page 13a, footnote 32) was based upon the applicability of Section 401(e) to the action of petitioners. The Court of Appeals stated that "We do not reach plaintiffs' alternate contention that violation of the right guaranteed by § 401(e) of the Act * * * is also redressable by suit in the district court, as against defendants' contention that in view of § 403 * * * the exclusive post-election remedy for § 401(e) violations is action by the Secretary of Labor under § 402 * * *" (Appendix B, page 13a, footnote 32). However, in

light of the provisions of Section 403, providing an exclusive remedy through the Secretary of Labor for alleged violations of Section 401, it is not possible to predicate the jurisdiction of the District Court over the complaint upon Section 401(e). This conclusion is buttressed by the legislative history of Section 401, which shows that (1) the Kennedy-Ervin bill in the Senate contained the present remedy;[10] (2) the administration bill introduced while the Kennedy-Ervin bill was under consideration provided for enforcement both by the Secretary and union members;[11] (3) the House version permitted enforcement by civil action brought by a member in the federal district courts;[12] and (4) the Conference Committee of the Senate and House removed the individual enforcement provisions and returned to the original Senate bill, providing that court action could be initiated only by the Secretary of Labor.[13] *Mamula* v. *United Steelworkers of America,* 304 F. 2d 108 (3rd Cir., 1962), and cases there cited.

---

[10] S. 1555, 86th Cong., 1st Sess. (1959).

[11] H.R. Rep. No. 741, 86th Cong., 1st Sess. (1959).

[12] Vol. II, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, page 1097.

[13] Vol. II, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, page 1433.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

PLATO E. PAPPS
1300 Connecticut Avenue, N. W.
Washington 6, D. C.

EDWARD J. HICKEY, JR.
JAMES L. HIGHSAW, JR.
620 Tower Building
Washington 5, D. C.

Counsel for Petitioners

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington 5, D. C.

JOHN PAUL JENNINGS
JENNINGS, HAID, GARTLAND & TILLY
345 World Trade Center
San Francisco 11, California

September 3, 1964

APPENDIX A

Judgment

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[Title of the Case]

Appeal from the United States District Court for the Northern District of California, Southern Division. This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of California, Southern Division and was duly submitted. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and hereby is affirmed.

Filed and entered June 23, 1964.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 18,542

THE GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, etc., et al., *Appellants*,

v.

JOHN J. KING, EARL N. ANDERSON, et al., *Appellees*.

[June 23, 1964]

Appeal from the United States District Court
for the Northern District of California
Southern Division

Before: POPE, JERTBERG, and BROWNING, Circuit Judges

BROWNING, Circuit Judge:

Plaintiffs brought suit alleging they were summarily discharged as officers of defendant union because they supported an unsuccessful candidate in a union election. They sought reinstatement and damages. The district court denied defendants' motion to dismiss,[1] and this interlocutory appeal under 28 U.S.C.A. § 1292 followed.

I

The district court concluded that plaintiffs' allegation of summary dismissal stated a claim under section 101(a)(5) of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 522, 29 U.S.C.A. § 411(a)(5)), which provides: "No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined . . . unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

[1] King v. Grand Lodge of the Int'l Ass'n of Machinists, 215 F. Supp. 351 (N.D. Calif. 1963).

We are satisfied, however, that Congress did not intend section 101(a)(5) to preclude summary removal of a member from union office. While the Act was being considered by Congress, objection was raised to section 101(a)(5) on the ground that it would permit wrongdoing union officials to remain in control while the time-consuming "due process" requirements of the section were met.[2] As an alternative it was proposed that the union's power of summary discipline be retained, and that notice and hearing be required after rather than before disciplinary action.[3] This solution was rejected; instead, the objection to section 101(a)(5) was met by including limiting language in the legislative history. The Conference Report on the Act stated that section 101(a)(5) "applies only to suspension of membership in the union; it does not refer to suspension of a member's status as an officer in the union."[4] Senator Kennedy, as a Senate conferee, advised the Senate that "this provision does not relate to suspension or removal from a union office. Often this step must be taken summarily to prevent dissipation or misappropriation of funds."[5]

---

[2] Hickey, The Bill of Rights of Union Members, 48 Geo. L. J. 226, 236 (1959); 105 Cong. Rec. 17870 (1959), 2 Leg. History of the Labor-Management Reporting and Disclosure Act of 1959 1414-15 (National Labor Relations Board 1959) (remarks of Senator Morse); 105 Cong. Rec. 15537 (1959), 2 Leg. His. LMRDA 1573 (remarks of Congressman Thompson).

[3] Rothman, Legislative History of the "Bill of Rights" for Union Members, 45 Minn. L. Rev. 199, 208, 216 (1960); Hickey, The Bill of Rights of Union Members, 48 Geo. L. J. 226, 245-46 (1959); 105 Cong. Rec. 15537 (1959), 2 Leg. His. LMRDA 1573 (remarks of Congressman Thompson); 105 Cong. Rec. 15835-36 (1959), 2 Leg. His. LMRDA 1667-68 (remarks of Congressman McCormack).

[4] H. R. Rep. No. 1147, 86th Cong., 1st Sess. 31 (1959), 1 Leg. His. LMRDA 935.

[5] 105 Cong. Rec. 17899 (1959), 2 Leg. His. LMRDA 1433.

In deference to the "patent legislative intent"[6] it has been held with virtual unanimity[7] that section 101(a)(5) does not apply to removal or suspension from union office.[8]

---

[6] Comment, Rights of Union Members: The Developing Law under the LMRDA, 48 Va. L. Rev. 78, 87 (1962).

[7] Kirby v. International Longshoremen's & Warehousemen's Union, Case No. 40643 (N.D. Cal. 1962) (unreported); Vars v. International Bhd. of Boilermakers, 204 F. Supp. 241 (D. Conn. 1962); Bennett v. Hoisting & Portable Eng'rs Local 701, 207 F. Supp. 361 (D. Ore. 1960); Mamula v. United Steelworkers, 202 F. Supp. 348, 350 (W.D. Pa. 1962); Hamilton v. Guinan, 199 F. Supp. 562 (S.D. N.Y. 1961); Burton v. Independent Packinghouse Workers Union, 199 F. Supp. 138 (D. Kan. 1961); Jackson v. The Martin Co., 180 F. Supp. 475, 480-81 (D. Md. 1960); Strauss v. International Bhd. of Teamsters, 179 F. Supp. 297, 300 (E.D. Pa. 1959); Kelly v. Streho, 42 CCH Lab. Cas. 24127 (E.D. Mich. 1961). But see, in addition to the decisions below, Moschetta v. Cross, 41 CCH Lab. Cas. 23101 (D. D.C. 1960), and Alvino v. Bakery & Confectionery Workers Int'l Union, 41 CCH Lab. Cas. 23102 (D. D.C. 1960).

This does not necessarily mean that an officer-member summarily dismissed has no cause of action under state law. "Violations of the federal statute are actionable in the district courts of the United States. In all other cases improper discipline will give rise to a state cause of action, precisely as in the past. There is no merit to the argument that the federal right is exclusive." Cox, Internal Affairs of Labor Unions under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 838 (1960). See also Summers, Preemption and the Labor Reform Act—Dual Rights and Remedies, 22 Ohio St. L. J. 119 (1961); Jackson v. The Martin Co., 180 F. Supp. 475, 481 (D. Md. 1960). Cf. International Ass'n of Machinists v. Gonzales, 356 U.S. 617 (1958).

[8] Whether (and, if so, in what circumstances) a member who is also a union official may be "fined, suspended, expelled, or otherwise disciplined," other than by suspension or removal from his union office, without complying with § 101(a)(5), is not before us. Compare Vars v. International Bhd. of Boilermakers, 204 F. Supp. 241, 243 (D. Conn. 1962); Mamula v. United Steelworkers, 202 F. Supp. 348, 350-51 (W. D. Pa. 1962); Burton v. Independent Packinghouse Workers Union, 199 F. Supp. 138, 140 (D. Kan. 1961) (dicta), with Hamilton v. Guinan, 199 F. Supp. 562, 565

We think these decisions are correct. And we think it makes no difference what the reason for the summary removal may have been. Congress's primary concern was that section 101(a)(5) should not bar summary removal of union officials suspected of malfeasance, but the means Congress chose to accomplish its purpose was to wholly exclude suspension or removal from union office from the category of union action to which section 101(a)(5) applied.

II

Plaintiffs also sought to state a claim under sections 101(a)(1), 101(a)(2), and 609 of the Act. We think they have succeeded, and are therefore authorized by section 102 of the Act to bring a civil action in the district court for appropriate relief.

Plaintiffs allege they were discharged because they actively supported a particular candidate for union office by meeting with other members and expressing views favorable to that candidate. Defendants concede that the right to engage in such intra-union political activity is guaranteed to members by sections 101(a)(1)[9] and 101(a)

(S.D. N.Y. 1961). See Thatcher, Rights of Individual Union Members under Title I and Section 610 of the Landrum-Griffin Act, 52 Geo. L. J. 339, 355 (1964); Note, Rights of Union Members: The Developing Law under the LMRDA, 48 Va. L. Rev. 78, 85-87 (1962).

[9] Section 101(a)(1) (29 U.S.C.A. § 411(a)(1)) Equal Rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2)[10] of the Act, but argue that these and other rights protected by Title I of the Act do not extend to members who are also officers of the union. However, sections 101 (a)(1) and (2) apply in terms to "every member," and nothing in the statutory language excludes members who are officers.[11] Nor is there any intimation in the legislative history that Congress intended these guarantees of equal political rights and freedom of speech and assembly to be inapplicable to officer-members.[12] The general pur-

[10] Section 101(a)(2) (29 U.S.C.A. § 411(a)(2)) Freedom of Speech and Assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

[11] This is also true of other sections of Title I. Our conclusion that § 101(a)(5) is inapplicable to the present case is based upon the conclusions that one removed from office is not "otherwise disciplined" within the meaning of § 101(a)(5), rather than upon a reading of the word "member" in that section as excluding officers. See note 8.

[12] Defendants call attention to the fact that as § 101(a)(4) originally passed the Senate it applied to "members or officers," and the words "or officers" were deleted in conference. S. 1555, 86th Cong., 1st Sess. § 101(a)(4) (1959), 1 Leg. His. LMRDA 520; H. R. 8490, 86th Cong., 1st Sess. § 101(a)(4) (1959), 1 Leg. His. LMRDA 877. Defendants argue that this change evidences a congressional understanding that union officers were excluded from the whole of Title I. See Judge Kalodner's opinion in Sheridan v. United Bhd. of Carpenters & Joiners, 306 F. 2d 152, 156-57 (3d Cir. 1962).

The language change in § 101(a)(4) was made without comment of any sort. Prior to the change, it was assumed in Senate debate

pose of the Act argues to the contrary. The guarantees of sections 101(a)(1) and (2) were adopted to strengthen internal union democracy.[13] To exclude officer-members from their coverage would deny protection to those best equipped to keep union government vigorously and effectively democratic. We therefore conclude that sections 101(a)(1) and (2) apply to officer-members such as plaintiffs.[14]

5

Section 102 (73 Stat. 523, 29 U.S.C.A. § 412) provides that "any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as

---

that officers-members were included in § 101(a)(4) (see remarks of Senator Mundt at 105 Cong. Rec. 6478 (1959), 2 Leg. His. LMRDA 1105). Thus, defendants' argument requires the inference that the Conference Committee drastically narrowed the assumed coverage of § 101(a)(4) with no explanation whatever. A more reasonable conclusion is that the Conference Committee recognized that the deleted words "or officers" were surplusage since as a practical matter union officers were also union members, and therefore deleted these words to conform § 101(a)(4) in style with other sections of Title I which used only the inclusive word "members."

[13] See, e.g., Murphy, The Background of the Bill of Rights and Its Provisions, Symposium on the Labor-Management Reporting and Disclosure Act of 1959 277-78 (Slovenko ed. 1961); Summers, The Law of Union Discipline: What the Courts Do in Fact, 70 Yale L. J. 175 (1960); Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 Harv. L. Rev. 851, 855-57 (1960); Cox, Internal Affairs of Labor Unions under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819 (1960); Smith, The Labor-Management Reporting and Disclosure Act of 1959, 46 Va. L. Rev. 195, 201 (1960); Summers, The Impact of Landrum-Griffin in State Courts, 13th Annual Conference on Labor 333, 335 (1960).

[14] The Second Circuit held § 101(a)(2) applicable to an officer-member in Salzhandler v. Caputo, 316 F. 2d 445 (2d Cir. 1963); Comments 77 Harv. L. Rev. 770 (1964), and 73 Yale L. J. 426 (1964). Cf. Judge Kaufman's opinion in Sheridan v. United Bhd. of Carpenters & Joiners, 306 F. 2d 152, 156 (3d Cir. 1962).

may be appropriate." We think it follows that plaintiffs' complaint for reinstatement and damages was sufficient to withstand dismissal for failure to state a claim upon which relief could be granted.[15]

But in any event, section 609 (73 Stat. 541, 29 U.S.C.A. § 529) "makes doubly secure the protection of the members in the exercise of their rights"[16] by making it unlawful for a union "to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act," and by providing explicitly that an action may be brought under section 102 to enforce the specific prohibitions of section 609.[17]

Defendants argue that the words "otherwise discipline" in section 609 must be read as not including removal from union office, since the same words have that restricted meaning in section 101(a)(5). The argument is a plausible one, for it is natural to suppose that within a single statute the same words will be used with the same meaning.[18] But it is also common experience that identical words may be used in the same statute, or even in the same section of a statute, with quite different meanings. And when they are, it is the duty of the courts to give the words

[15] Salzhandler v. Caputo, 316 F. 2d 445, 449-51 (2d Cir. 1963); Stark v. Twin City Carpenters Dist. Council, 219 F. 2d 528, 538 (D. Minn. 1963).

[16] Salzhandler v. Caputo, 316 F. 2d 445, 449 (2d Cir. 1963).

[17] Section 609 (29 U.S.C.A. § 529). Prohibition on certain discipline by labor organization. It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 412 of this title shall be applicable in the enforcement of this section.

[18] Comment, Rights of Union Members: The Developing Law under the LMRDA, 48 Va. L. Rev. 78, 87 (1962).

"the meaning which the legislature intended [they] should have in each instance." *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U.S. 427, 433 (1932).[19]

Sections 101(a)(5) and 609 have wholly different purposes, and the difference is such as to satisfy us that although Congress did not intend the words "otherwise discipline" to include removal from union office in section 101(a)(5), it did intend the words to include such action in section 609.[20]

Section 101(a)(5) guarantees to union members, as one of several independent rights conferred upon them by Title I of the Act, that they shall be accorded procedural due process before being subjected to disciplinary action, for whatever reason. Section 609, on the other hand, has no bearing upon the procedures to be followed in disciplining union members. Section 609 appears in Title VI of the Act, a collection of section having to do with miscellaneous administrative and enforcement matters; section 609 itself is not a source of additional independent

---

[19] See also Farmers Reservoir & Irrigation Co. v. McComb, 337 U.S. 755, 764-66 (1949); Puerto Rico v. Shell Co., 302 U.S. 253, 258, 259 (1937); Helvering v. Stockholms Enskilda Bank, 293 U.S. 84, 87-88 (1934); Schultz v. NLRB, 284 F. 2d 254, 258-59 (D.C. Cir. 1960).

[20] ". . . [B]ecause much of the bill was written on the floor of the Senate or House of Representatives and because many sections contain calculated ambiguities or political compromises essential to secure a majority," it is particularly important, in interpreting the Labor-Management Reporting and Disclosure Act of 1959, "to seek out the underlying rationale without placing great emphasis upon close construction of the words." Cox, Internal Affairs of Labor Unions under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 852 (1960).

See also Thatcher, Rights of Individual Union Members under Title I and Section 610 of the Landrum-Griffin Act, 52 Geo. L. J. 339, 340 n. 4 (1964); Smith, The Labor-Management Reporting and Disclosure Act of 1959, 46 Va. L. Rev. 195, 197-98 (1960).

rights, but is an enforcement provision, designed, as we have noted, to effectuate rights conferred in other sections of the Act by making it unlawful to punish members who seek to exercise such rights. Punishment for this improper purpose is prohibited by section 609 whether inflicted summarily or after a full panoply of procedural protections.

Congress, through the legislative history materials, imposed a limiting gloss upon the words "otherwise discipline" in section 101(a)(5) to preserve union power to summarily remove officer-members suspected of wrongdoing in order to protect unions from continuing depredations while charges are being investigated and resolved. This object is fully accomplished by reading the words "otherwise discipline" in section 101(a)(5) as not including removal from union office. It would not further this purpose in any way to impose the same restriction upon the same words in section 609, since that section has nothing to do with whether or not discipline is summary. There is nothing in the legislative history to indicate that Congress wished to preserve an unrestricted power in the union to discipline officer-members (the subject matter of section 609, when discipline is imposed because of the exercise of rights under the Act), as distinguished from the power to discipline summarily (the subject matter of section 101(a)(5)). Thus, to construe section 609 to exclude from its coverage dismissal from union office would immunize a most effective weapon of reprisal against officer-members for exercising political rights guaranteed by the Act without serving any apparent legislative purpose; and, as we have noted, the members thus exposed to reprisal would be those whose uninhibited exercise of freedom of speech and assembly is most important to effective democracy in union government.[21]

---

[21] It has been suggested that the right of union members to remove their officers is itself essential to the democratic self-govern-

Plaintiffs are appointed officials, and defendants argue that "elected officials of any private or political organization at any level have both the responsibility and the power of their positions, and . . . the burden of the responsibility carries with it the right to appoint subordinate officials to aid in the discharge of that responsibility who are in full and complete accord with the views of the elected officer."[22] Plaintiffs allege they were were discharged because they exercised section 101(a)(1) and (2) rights; if defendants dispute this allegation they raise an issue of fact to be resolved at trial. We assume, however, that defendants mean to argue that successful candidates for union office must have the right to discharge appointed union officials who expressed support for their opponents. Realistically, this is simply to argue that members appointed to union office may not actively engage in union political activities while occupying such positions.

Undoubtedly a substantial argument can be made that active, partisan participation by jobholders in intra-organizational politics is a threat to good administration. Congress, in adopting the Hatch Act, endorsed this view with

---

ment. Sheridan v. United Bhd. of Carpenters & Joiners, 306 F. 2d 152, 158-59 (3d Cir. 1962). The power of the member-electorate to turn out elected officials for "serious misconduct" is guaranteed by § 401(h) of the Act (73 Stat. 532, 29 U.S.C.A. § 481(h)), and is not at issue here. And, as we have said, there is nothing to indicate that Congress believed effective union democracy required that controlling union officials have power to discharge other officers for exercising freedom of speech and assembly in internal union political affairs.

[22] To which one commentator has added, "The art of patronage is well known in political and administrative life and is equally well known and accepted for the same reasons in union life." Thatcher, Rights of Individual Union Members under Title I and Section 610 of the Landrum-Griffin Act, 52 Geo. L. J. 339, 357 (1964).

respect to most federal employees.[23] Based upon this precedent, it has been suggested "that the internal political activities of full time union member employees may be regulated to prevent their use for either side in election contests . . . ."[24]

It may well be that the "reasonable rules and regulations" exception of section 101(a)(1)[25] and the similar proviso of section 101(a)(2)[26] would permit a union to adopt the principle of "required political neutrality . . . as a sound element for efficiency,"[27] and formulate, and apply without discrimination, regulations imposing reasonable limitations upon the political activity of union jobholders. But the defendant union has made no effort to implement such a program. And arguments in favor of doing so cannot support defendants' contention that they should be free to discharge particular union employees because they are not their political partisans.

Finally, defendants contend that to extend section 609 to dismissal from union employment would create a potential conflict of jurisdiction between the courts and the National Labor Relations Board since plaintiffs allege conduct which might constitute an unfair labor practice by the union-employer under section 8(a) of the National Labor Relations Act (29 U.S.C.A. § 1158(a)).[28] Congress was aware that the rights conferred by the Labor-Manage-

---

[23] See particularly, 53 Stat. 1148 (1940), as amended, 5 U.S.C.A. § 118i; 18 U.S.C.A. § 595; United Public Workers v. Mitchell, 330 U.S. 85, 97-104 (1947). Compare Fort v. Civil Serv. Comm'n, Sup. Ct. of Cal., May 28, 1964.

[24] Givens, Federal Protection of Employee Rights within Trade Unions, 29 Fordham L. Rev. 259, 278 (1960).

[25] See note 9.

[26] See note 10.

[27] United Public Workers v. Mitchell, 330 U.S. 75, 97 (1947).

[28] Office Employes Int'l Union v. NLRB, 353 U.S. 313 (1957).

ment Reporting and Disclosure Act of 1959 overlapped those available under state law and other federal legislation, and expressly provided that these rights were to be cumulative.[29]

The Court of Appeals for the Second Circuit has held section 609 applicable to the discharge of a union officer for exercise of section 101(a)(2) rights.[30] There are no decisions to the contrary.[31] We are satisfied that this is the proper construction of the statute.[32]

---

[29] Section 103 (73 Stat. 523 (1959), 29 U.S.C.A. § 413). Authorities are collected in Rekant v. Shochtay-Gasos Union, 320 F. 2d 271, 274-75 (3d Cir. 1963), and Parks v. International Bhd. of Elec. Workers, 314 F. 2d 886, 922-23 (4th Cir. 1963). Cf. Barunica v. United Hatters, Cap & Millinery Workers, CCH Labor L. Rep. ¶ 18430 (8th Cir. 1963). See also Thatcher, Rights of Individual Union Members under Title I and Section 610 of the Landrum-Griffin Act, 52 Geo. L. J. 339, 361 (1964).

[30] Salzhandler v. Caputo, 316 F. 2d 445 (2d Cir. 1963). See note 14.

[31] Judge Kalodner's opinion in Sheridan v. United Bhd. of Carpenters & Joiners, 306 F. 2d 152 (3d Cir. 1962), was not joined in by Judge Hastie, who concurred in the result upon a different ground, or by Judge McLaughlin, who dissented. Seeley v. Brotherhood of Painters, Decorators & Paper Hangers, 308 F. 2d 52 (5th Cir. 1962), and the district court cases cited to us (see note 7), do not involve discharge in violation of § 609, because plaintiff exercised rights guaranteed by sections of Title I other than § 101(a)(5).

[32] We do not reach plaintiffs' alternate contention that violation of the right guaranteed by § 401(e) of the Act (73 Stat. 532 (1959), 29 U.S.C.A. § 481(e)) to "vote for or otherwise support the candidate or candidates of [their] choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind . . ." is also redressable by suit in the district court, as against defendants' contention that in view of § 403 (73 Stat. 534 (1959), 29 U.S.C.A. § 483) the exclusive post-election remedy for § 401(e) violations is action by the Secretary of Labor under § 402 (73 Stat. 534 (1959), 29 U.S.C.A. § 482). See Mamula v. United Steel Workers, 304 F. 2d 108 (3d Cir. 1962); Blumrosen, The Worker and Three Phases of Unionism, 61 Mich. L. Rev. 1435,

III

Defendants asked us to review the refusal of the district court to grant partial summary judgment with respect to a portion of defendants' claim for money damage.[33] The interlocutory order denying such relief is not properly before us.

Affirmed.

1452-53 (1963); Cox, Internal Affairs of Labor Unions under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 845 (1960); Hickey, The Bill of Rights—Responsibilities of Its Beneficiaries, 48 Geo. L. J. 257, 266 (1959); Smith, The Labor-Management Reporting and Disclosure Act of 1959, 46 Va. L. Rev. 195, 224-25 (1960). Compare Beckman v. International Ass'n of Bridge, Structural & Ornamental Iron Workers, 314 F. 2d 848 (7th Cir. 1963), with Robins v. Rarback, 325 F. 2d 929 (2d Cir. 1963).

[33] Defendants contend that under the undisputed facts plaintiffs' employment was in any event subject to renewal or termination on an annual basis at the discretion of the appointing authority, and that plaintiffs therefore have no claim for unpaid salary during the period subsequent to the termination of their respective annual terms.

APPENDIX C

Statutes Involved

Sections 101(a)(1), 101(a)(2), 101(a)(5), 102, 401(e), 402, 403 and 609 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A., Sections 411(a)(1), 411(a)(2), 411(a)(5), 412,, 481(e), 482, 483 and 529):

Section 101(a)(1):

"Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

Section 101(a)(2):

"Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

* * * * *

Section 101(a)(5):

"No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except

for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

* * * * *

Section 102:

"Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

* * * * *

Section 401(e):

"In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall

be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter."

* * * * *

Section 402:

"(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

"(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has

not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

"(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 481 of this title, or

(2) that the violation of section 481 of this title may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 481 of this title, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

"(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as

the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal."

Section 403:

"No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this subchapter. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive."

* * * * *

Section 609:

"It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section."

Subject Index

	Page
Statement of the case	1
A. The need to restate	1
B. The facts	2
C. The question presented	7
Argument	7
I. The Court of Appeals correctly decided that respondents' removal as retribution for the exercise of membership rights protected by LMRDA is a violation of that Act	7
II. The petition does not raise any questions of substantial importance	11
III. The decision of the Court of Appeals does not conflict with the decisions of other Circuits or other Federal Courts	14
IV. The decision of the Court of Appeals does not produce unreasonable or discriminatory results	17
Conclusion	19

Table of Authorities Cited

Cases

Pages

Salzhandler v. Caputo, 316 F.2d 445 (2d Cir. 1963) cert. den. 375 U.S. 946 (1963) 16

Sheridan v. United Brotherhood of Carpenters, 306 F.2d 152 (3d Cir. 1962) 14, 15

Statutes

Labor Management Reporting and Disclosure Act (73 Stat. 519 (1959) 29 U.S.C.A. Section 401-531 (1962)) 2

Section 101(a)(1) (29 U.S.C. Section 411(a)(1)) 7, 8, 9, 10, 12, 14

Section 101(a)(2) (29 U.S.C. Section 411(a)(2)) 7, 8, 9, 10, 12, 14

Section 101(a)(5) 6, 12, 13

Section 102 9

Section 401(e) (29 U.S.C. Section 481(e)) 9

Section 609 (29 U.S.C. Section 529) 7, 9, 11, 12, 13

Other Authorities

H.R. Rep. No. 741, 86th Cong., 1st Sess. 2 (1959) 13

Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, Vol. I, p. 760 13

Note, 11 U.C.L.A. L. Rev. (May 1964) 632 at p. 636 15

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1964

No. 456

THE GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, et al.,
Petitioners,

vs.

JOHN J. KING, EARL N. ANDERSON, et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

STATEMENT OF THE CASE

A. The Need to Restate.

A reading of Petitioner's statement of the case would make it appear that the instant action involves no more than a simple termination in vacuo of certain union employees, whose employment tenure lies in

the unfettered discretion of the Union President and who happen incidentally to be members of the Union-employer. Petitioners, in addition to characterizing respondents' status in a manner not supported by the Record, pointedly omit any real indication of the integral relation existing between the exercise by respondents of rights guaranteed them by the Labor Management Reporting and Disclosure Act[1] (73 Stat. 519 [1959] 29 USCA Section 401-531 [1962]) and their termination. Totally obscured is the fact that the termination of respondent's positions as appointed officers was designed solely as retribution for the exercise of these guaranteed rights.

Petitioners' statement of the case finds its natural correlative and outgrowth in their statement of the question presented. Petitioners seek to mischaracterize the present action as an attempt to contort the "Bill of Rights" provisions of the LMRDA to govern a simple employment relationship and one "where membership rights in the organization are not disturbed."

As a result of petitioners treatment of the facts and the question, respondents feel compelled to briefly restate both.

B. The Facts.

Respondents were six Grand Lodge Representatives (hereafter GLRs) of petitioner International Association of Machinists (IAM). (R. 6-7.) GLRs are

---

[1]The Act will hereinafter be referred to as LMRDA or by its popular name the "Landrum-Griffin Act".

appointive officers, whose duties vary, but include such functions are representing the IAM in expansion, organization, grievance representation, NLRB representation and negotiations with employers. (R. 7.) As GLRs, respondents received a salary of $12,000 per year together with certain insurance and pension benefits. (R. 7-8.) Each had spent long years working in the union movement including an average of 15 years in the position of GLR, preceded by not less than five years membership in the IAM. (R. 6-7.)

On November 19, 1960, individual petitioners as the executive council of the IAM, notified Roy M. Brown, a general vice president of the IAM, that the executive council would not support his candidacy in the next national union election, but would instead support another candidate. (R. 13.) Brown thereupon announced his intention to run for the office of secretary-treasurer of the IAM in opposition to the incumbent candidate endorsed by the executive counsel. (R. 13.) Brown held certain views as to union policies with which respondents concurred, as a result of which respondents, together with a number of other members of the IAM, determined to support his candidacy. (R. 12-13.) Thereafter respondents were among the most active supporters of Brown. (R. 14.)

The results of the 1961 IAM elections were certifi ' on June 15, 1961, in Washington, D.C., by official election tellers. (R. 14.) The results indicated that Brown had been defeated. (R. 15.) *On the same day as the certification of the election results,* petitioner A. J. Hayes, president of the IAM, wrote to each of the

respondents notifying him that his services as Grand Lodge Representative were terminated as of July 31, 1961. (R. 15.) In addition, petitioners caused spurious union charges to be filed against respondent Skagen, and, contrary to prior consistent practice, refused the application of respondent McGraw for disability retirement following the progressive worsening of a postoperative condition. (R. 18-27.)

After unsuccessful attempts by respondents to gain internal administrative review of their discharges, respondents filed this action seeking restoration to their positions and damages, *or* in the alternative, damages only. (R. 3-46.) Of the six counts of the complaint, the first three counts were based on violations of the LMRDA and the second three counts on state law under the pendent jurisdiction of the federal courts. Respondents' counts under the LMRDA demonstrated that petitioners had disciplined respondents contrary to LMRDA Section 609, 29 USC § 529, for exercising their equal rights and free speech rights granted by LMRDA Sections 101 (a) (1) and 101 (a) (2), 29 USC § 411 (a) (1) and § 411 (a) (2), and for exercising their rights to support the candidate of their choice, guaranteed by LMRDA Section 401 (e), 29 USC § 481 (e). In addition, respondents alleged that petitioners' discipline of respondents without a hearing was contrary to LMRDA Section 101 (a) (5), 29 USC § 411 (a) (5).

Respondents' complaint repeatedly alleged that petitioners' actions were taken to discipline members

who had supported Roy M. Brown in the election. (R. 14, 15, 18, 19, 23, 24, 27, 28, 29.) In affidavits filed in opposition to petitioners' motion and in support of respondents' motion each respondent stated that he had been discharged "solely because they sought to discipline me for freely expressing my views favorable to Roy M. Brown and other candidates of my choice." (R. 71, 74, 77, 81, 84, 87.) Petitioners have never contested these facts. In fact, at the hearing on the motions, petitioners' attorney on four occasions frankly admitted that the respondents were discharged as GLRs solely because of their exercise of their LMRDA granted right of free speech and free election activity. (R. 113-114, 120-121, 123, 147.)

Petitioners' assertion that respondents were appointed at the will of the IAM president, and that they continued in the employ of the union at his whim is directly contrary to the allegations of the complaint and the sworn statements of each respondent. The complaint alleges express and implied contractual rights concerning employment (R. 31); that appointments were made with the approval of the executive council. (R. 69.) In addition, each affidavit states:

> "Each year I received a small laminated card from the union *for the purpose of identification*. No one document set forth all the terms of the employment contract between myself and defendant International Association of Machinists. Rather, this contract results from the initial appointment, the provision of the IAM Constitu-

> tion, and the practices, customs and usages which exist, pertaining to the appointment of a Grand Lodge Representative and his tenure. An implied term of said contract was employment until retirement or official termination for cause in accordance with union constitutional practices." (R. 69, 72-73, 76, 79, 82, 83.) (Emphasis added.)

Petitioners' statements concerning the nature of respondents' employment amount simply to bald assertions supported neither by the record nor by fact.

Petitioners moved in the District Court for dismissal under Rule 12(b) of the Federal Rules of Civil Procedure for failure to state a cause of action and for lack of jurisdiction. (R. 46-47.) Petitioners sought in the alternative to secure summary judgment. (R. 46-47.) Respondents resisted petitioners' motion and, in turn, sought summary judgment on their own behalf. (R. 67-78.) The District Court denied both motions. (R. 99.)

The Court concluded that, at the least, a cause of action was stated under the procedural protections of LMRDA section 101 (a) (5), and in view of that did not consider the other sections relied upon. An interlocutory appeal was taken from the denial of Petitioners' motion. The Court of Appeals for the Ninth Circuit by a unanimous opinion concluded that although the procedural provisions of Section 101 (a) (5) did not apply in view of a legislative gloss placed upon that single section, a cause of action was clearly stated under Sections 609 and 102 for the actions of petitioners taken as retribution for the exercise of

rights guaranteed to respondents by Sections 101 (a) (1) and 101 (a) (2).[2]

It is from this decision that petitioners seek Certiorari.

C. The Question Presented

Does petitioners' termination of respondents from their positions as Grand Lodge Representatives solely to discipline them for the exercise of their membership rights guaranteed by Sections 101 (a) (1) and 101 (a) (2) of the LMRDA constitute a violation of those sections and of the protective provisions of Section 609 of LMRDA?

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY DECIDED THAT RESPONDENTS' REMOVAL AS RETRIBUTION FOR THE EXERCISE OF MEMBERSHIP RIGHTS PROTECTED BY LMRDA IS A VIOLATION OF THAT ACT.

It is imperative at the outset that certain matters, already alluded to, be stressed. Respondents in no way seek to vindicate any "right to employment" as

---

[2]Respondents based one of the LMRDA counts upon the combination of Section 401 (e) and Section 609. Neither the Court of Appeals nor the District Court passed upon this argument. Respondents feel that the "*right* to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind . . ." set out in 401 (e) falls within the protection of Section 609 from discipline of a member "for exercising any *right to which he is entitled under the provisions of this Act.*" (Emphasis added.) Respondents believe that unless the election itself is attacked, there is no conflict with the power of the Secretary of Labor. The legislative history supports this conclusion. In view of the fact that the court below did not rest its opinion on this Section, respondents will not discuss this further but simply refer the Court to their brief below, at pp. 23-6.

GLRs under the LMRDA, nor do respondents assert that the LMRDA governs the "employment relation." On the contrary, respondents are simply seeking vindication of rights held as *members* of the union; they seek to be protected from or compensated for discipline leveled against them because they exercised fundamental membership rights guaranteed by the LMRDA. The only connection that the employment relation has to the instant case is that this is the means petitioners have chosen as retribution for the exercise of those membership rights.

In supporting the candidacy of Roy Brown, respondents were exercising membership rights guaranteed them primarily by the so-called Bill of Rights provision of the LMRDA. These protective provisions include: An assurance of equal rights (Section 101 (a) (1), 29 USC, Section 411 (a) (1)[3]; freedom of speech and assembly (Section 101 (a) (2), 29 USC, Section 411 (a) (2)[4]; the right to vote or otherwise

[3]"LMRDA Sec. 101 (a) (1) 29 USCA 411 (a) (1) Equal Rights—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and by laws.".

[4]"LMRDA Sec. 101 (a) (2) 29 USCA 411 (a) (2) Freedom of Speech and Assembly. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce

support a candidate without discipline or reprisal of any kind (Section 401 (e), 29 USC, Section 481 (e)).[5]

Solely as a result of the exercise of these membership rights, respondents were fired from their long-held positions with the union. By this action petitioners clearly violated these sections, and the protective and remedial provisions of Section 609 of the LMRDA, 29 USC, Section 529, which provides:

> "It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, *or otherwise discipline* any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 102 shall be applicable in the enforcement of this section." (Emphasis added)[6]

---

reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

[5]"LMRDA Sec. 401 (e) 29 USCA 481 (e). In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed), and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof."

[6]The violation of Sections 101 (a)(1) and 101 (a)(2) by themselves give rise to a cause of action under Section 102 which provides: "LMRDA Sec. 102, 29 USCA 412. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

When petitioners assert that the decision below was erroneous in that the Court construed the LMRDA as governing the "relation between an employee and his employing union" and the "right to hold an office or job with a union", it is patently clear that this assertion finds its genesis in petitioners' avoidance of the facts and mis-construction of the question presented. For nowhere did the Court below find any "right" to be a GLR set out in the statute or that the LMRDA governs the employer-employee relationship.

The Court determined that since respondents are members of the IAM, they possess certain fundamental rights which are guaranteed to "members" by Sections (101) (a) (1) and 101 (a) (2). The Court then concluded that when petitioners disciplined respondents for the exercise of their membership rights by removing them from their positions as GLRs, such discipline was a violation of the guaranteed rights and of the protective provisions of Section 609. The only connection that the Court of Appeals found between the LMRDA and the "employment-relationship" lies solely in the fact that this is the means used by petitioners to punish respondents for use of their LMRDA protected rights.

Petitioners apparently bristle at the statement by the Court of Appeals that petitioners are contending that the Bill of Rights protections do not apply to Officer-Members. But stripped of all its trappings this is exactly what petitioners contended below. For petitioners are even now asserting that respondents could not exercise these rights free from retribution

through loss of their livelihoods. To say this is to say that respondents did not really have these rights. Under these circumstances such "rights" become so vapid and evanescent as to be nonexistent. It would, in fact, appear, that when petitioners now piously admit that member-officers or member-employees enjoy the same membership rights, they are revealing the absurdity of the result for which they contend. For no rights exist when a knife rests at your economic jugular vein. And respondents' "equal" rights and right of free speech become reduced to a mockery.

And lest petitioners imply to this Court that they had short shrift below and were unfairly treated, it should be noted that the Court fully considered the contention, made again by defendant, that the inclusive language of Section 609—"otherwise discipline" —did not encompass petitioners' retributive actions. (Pet. p. 8a). The Court considered this strained argument and properly rejected it as totally inconsistent with the fundamental policy of the act and its legislative history.

II. THE PETITION DOES NOT RAISE ANY QUESTIONS OF SUBSTANTIAL IMPORTANCE.

Basically, petitioners assert that two important questions are presented. First, they claim that the holding of the Court of Appeals (as petitioner describes that holding) greatly extends the coverage of the LMRDA. Second, petitioners allege that the Court below reached this holding only by "novel" methods of statutory construction.

Petitioner's first contention is based on a confusing description of the holding of the Court below. Petitioners talk of application of the Bill of Rights to "employees who also *happen* to be members of the union" and to the termination of their employment "even though such action does not affect their *membership.*" (Pet. p. 12, emphasis added.) The Court of Appeals, however, held that when petitioners dismissed respondents from their positions for the exercise of LMRDA protected *membership rights,* which petitioners admit respondents as members shared, such discipline was a violation of the LMRDA.

Equally unavailing is petitioners' second contention that an important question is presented by the "novel" methods of statutory construction applied by the Court below. It is hardly "novel" or objectionable to construe the language of a statute—especially one such as the present reflecting board social policy—so as to effectuate its legislative purpose, and to construe its language in light of that purpose as revealed by the legislative history.

Petitioners complain that the opinion below has "split Section 1 asunder" without in any manner explaining how a limitation in the fair procedure section (LMRDA Section 101 (a) (5)) limits respondents' equal rights and free speech rights under 101 (a) (1) and 101 (a) (2).

Petitioners' assertion that the Court of Appeals' interpretation of Section 609 is inconsistent with its view of 101 (a) (5) reflects the unwillingness of petitioners to have the Court examine the legislative his-

tory and construe the statute in light of the clear legislative purpose.

The LMRDA and, in particular, the Bill of Rights provisions, is a response to the disturbing abuses revealed by the so-called McClellan Committee, and has as an avowed purpose the protection of union democracy and the free exercise by union members of fundamental rights without fear of reprisal. (See H.R. Rep. No. 741, 86th Cong., 1st Sess. 2 [1959]; Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, Vol. I, p. 760. See also remarks of Senator McClellan at Appendix B of Appellants' Br.)

In order to quiet fears that the right of fair procedure set out in 101 (a) (5) would impede the summary suspension of officers guilty of violations of other provisions of the LMRDA, such as dissipation or misappropriation of funds, a legislative "gloss" was placed on this one section in order to make clear that this section should not be construed to prevent the taking of such action summarily. But nowhere is there any indication of any intention to limit the purpose of guaranteeing fundamental rights protected from reprisal and to cut down the broad protective cloak thrown around the enumerated rights by Section 609.

Judge Browning incisively elucidated this when he stated:

> "There is nothing in the legislative history to indicate that Congress wished to preserve an unrestricted power in the union to discipline

> officer-members (the subject matter of section 609, when discipline is imposed because of the exercise of rights under the Act), as distinguished from the power to discipline summarily (the subject matter of section 101 (a) (5)). Thus, to construe section 609 to exclude from its coverage dismissal from union office would immunize a most effective weapon of reprisal against officer-members for exercising political rights guaranteed by the Act without serving any apparent legislative purpose; and, as we have noted, the members thus exposed to reprisal would be those whose uninhibited exercise of freedom of speech and assembly is most important to effective democracy in union government." (Petitioner's brief p. 10a.)

It is true that equal rights and the right of free speech set out in LMRDA 101 (a) (1) and 101 (a) (2) are important rights and the safeguarding of these rights is of concern to this Court. But the Court of Appeals has properly acted to protect these rights, and, in view of this, no important question remains for this Court's attention.

III. THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH THE DECISIONS OF OTHER CIRCUITS OR OTHER FEDERAL COURTS.

In contending that the decision of the Court of Appeals conflicts with other "circuits," petitioners mention only the case of *Sheridan v. United Brotherhood of Carpenters,* 306 F2d 152 (3d Cir. 1962), which petitioners assert constitutes the opinion of the Third Circuit.

It is clear that there is *no* "opinion" of the Third Circuit, in the *Sheridan* case as it relates to this action. Judge Kalodner's opinion was joined by neither of his fellow judges. Judge Hastie concurred *only* in the result and not in Judge Kalodner's reasoning. Judge Hastie opened his opinion by stating:

> "I vote to reverse the judgment below, but for a reason different from those stated by Judge Kalodner." (306 F2d at p. 159.)

Judge Hastie's opinion is based solely on a failure to exhaust remedies within the union. Petitioners, unwilling to accept Judge Hastie at his word, have attempted unrealistically to ascribe Judge Kalodner's views to him.

Judge McLaughlin dissented and wrote a perceptive opinion analyzing the purpose of the LMRDA and demonstrating the correctness of District Judge Steele's opinion in the Court below.

It is thus apparent that Judge Kalodner's opinion remains just that—Judge Kalodner's opinion. Additionally, it should be noted that his opinion has been soundly criticized in a recent law review commentary for its strained construction. This Note tellingly observed:

> "Since loss of union office can be as effective a sanction as a fine, suspension, or expulsion, to deny a union member-officer protection which is afforded other members would appear to subvert the basic purpose of Title I to benefit all union members." (Note, 11 UCLA L. Rev. [May 1964] 632 at p. 636.)

It would, in fact, appear that the decision of the Court below is supported by the only other relevant Circuit decision. In *Salzhandler v. Caputo,* 316 F.2d 445 (2d Cir. 1963) *cert. den.* 375 US 946 (1963), the Second Circuit construed the same provisions here involved to include within their protective scope the paid financial secretary of a local union. There the union in addition to other punishment, removed the member-officer from his position for circulating a pamphlet critical of the local president. The Second Circuit reversed the dismissal of the action by the trial Court and directed the entry of judgment as prayed, which included reinstatement to the position of financial secretary.

Failing to show a conflict between the circuit courts as required by Rule 19 of the Supreme Court Rules, petitioners assert the decision of the Court below conflicts with certain District Court opinions.

The District Court cases cited by petitioners, however, are entirely consistent with the decision below. None of these cases deal with removal as discipline for LMRDA protected membership rights. The quotations supplied by petitioners out of context simply indicate what respondents do not deny, that when there is a dismissal from office and/or employment unrelated to LMRDA protected membership rights, the LMRDA does not apply.

IV. THE DECISION OF THE COURT OF APPEALS DOES NOT PRODUCE UNREASONABLE OR DISCRIMINATORY RESULTS.

Petitioners' argument that the opinion of the Court below produces unreasonable and discriminatory results is for the most part another throwback to petitioners' unwillingness to deal with the facts of the case and the real contentions of respondents and holding of the Court below. The only reason the LMRDA is applicable to the present case is because petitioners' action was taken as discipline for the exercise of LMRDA protected rights. There is no governing of the employment relation or "job protection" as such.

Petitioners say apparently that it is unreasonable that all classifications of employees can gain the Bill of Rights protections "simply by joining the labor organization." But GLRs together with other appointed and elected officers of the union, are *required* by the union constitution to be members of the union, and in the case of GLRs they must be members for at least five (5) years. (Art. VI, § 8 p. 20.). Further, the only rights, with which we are concerned, that flow from the LMRDA are equal political rights within the union and the right of free speech. The only rights that a clerical or janitorial employee would gain by joining the union is the right to fully participate in union democracy without fear of reprisal or retribution by the IAM.

It would, in fact, seem that petitioners now clearly contend that which they subsequently deny: that a union member who happens to be an officer or em-

ployee of the union does *not* enjoy the protection of the LMRDA Bill of Rights. This would produce the utmost in discrimination, and would be entirely contrary to the grant of "*equal* rights and privileges" and the grant of rights to "*every* member."

The specter of "disruptive" political activity is equally beside the point. Petitioners have never contended that respondents did not ably and efficiently carry out the duties of their offices and their obligations to the union. Had that been the case, the LMRDA would not have limited the union's right to remove them from their positions.

Petitioners appear dissatisfied with the suggestion of the Court below that if the union feels that political activity, as such, would impede the administration of the union, it might neutralize all employees of the union by regulations analogous to the Hatch Act.

But obviously this is not what petitioners desire. They want the power to be able to reward their partisans and throttle their opposition. The "disruptiveness" they object to is not the disruptiveness of union administration, but the disruptiveness of the power of entrenched leadership. The wish is to be able to maintain a phalanx of political aides in order to protect their positions of power within the union. This flies in the face of the LMRDA.

CONCLUSION

For the foregoing reasons, the petition for Writ of Certiorari should be denied.

Dated, San Francisco, California,
September 28, 1964.

Respectfully submitted,
SCHOFIELD, HANSON, BRIDGETT,
MARCUS & JENKINS,
DANIEL N. LOEB,
GERALD D. MARCUS,
Counsel for Respondents.

Office Supreme Court, U.S.
FILED
OCT 8 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 456

THE GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL., *Petitioners*

v.

JOHN J. KING, EARL N. ANDERSON, ET AL., *Respondents*

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PLATO E. PAPPS
1300 Connecticut Avenue, N. W.
Washington 6, D. C.

EDWARD J. HICKEY, JR.
JAMES L. HIGHSAW, JR.
620 Tower Building
Washington 5, D. C.

Counsel for Petitioners

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington 5, D. C.

JOHN PAUL JENNINGS
JENNINGS, HAIR, GARTLAND & TILLY
345 World Trade Center
San Francisco 11, California

October 8, 1964

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 456

THE GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL., *Petitioners*

v.

JOHN J. KING, EARL N. ANDERSON, ET AL., *Respondents*

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners submit this reply to the brief of the respondents in opposition to the petition for a writ of certiorari in the above-entitled cause because of their belief that it will be helpful to the Court in its consideration of the petition. Respondents' brief in opposition, instead of sharpening the issues presented to the Court, simply sows confusion and seeks to obscure the basic problem of statutory interpretation that is

involved. Petitioners therefore make the following points by way of reply which they believe appropriate:

1. Respondents continue to reiterate that it is the contention of the petitioners that a union member who happens to be an officer or employee of the union does not enjoy the protection of the LMRDA Bill of Rights. (Resp. Br. 17-18.) Petitioners do not make such contention and have never made such a contention. It is obvious that a union member enjoys the protection of the LMRDA Bill of Rights whether he is simply a member or whether he is a member-officer or whether he is a member-employee. The question presented is the scope of that protection under the statute. Is the protection of the statute limited to actions of the union depriving an individual of membership or otherwise limiting his exercise of membership (as the petitioners contend) or does the statute also restrict union action directed only to a union-employee relationship (as the respondents contend)? It is to this basic problem of statutory construction and the consequences which flow therefrom that the petition is directed.

The respondents' statements that they do not assert that the LMRDA governs the "employment relation" (Resp. Br. 8) are simply a resort to semantics. The only action taken by the union against the respondents was to terminate their employment relationship with the union. They have remained members with full membership rights including the right to run for local or international office and to support or oppose candidates of their choice in any union election. The basic relief requested by the complaint is for a mandatory injunction restoring the respondents to their jobs with the union and the assessment of damages for their

alleged unlawful discharge from such jobs. (Resp. Br. 32, 33.)

2. Respondents now argue that the problem of statutory construction involved does not raise any question of substantial importance warranting review by this Court. (Resp. Br. 11-14.) However, when the petitioners applied to the United States Court of Appeals for the Ninth Circuit for permission to take an appeal from the order of the District Court pursuant to Title 28, Section 1292(b), United States Code Annotated (R. 152), the respondents supported that application. After stating their belief in the correctness of the District Court decision, respondents made the following statement to the Court of Appeals: (R. 180)

> "However plaintiffs do urge that this Court grant the defendants' application for permission to file an interlocutory appeal, as plaintiffs agree with the District Court that 'the case appears to be one of first impression.' (p. 5), and for this reason, it is in the plaintiffs' best interest that an authoritative appellate affirmation of their rights to relief under the provisions of the Labor-Management Reporting and Disclosure Act be obtained prior to trial of this Action."

The problem of statutory construction involved is no less important today and it is still in the best interest of the respondents as well as all unions and all union members that an authoritative judicial determination of the scope of the statute be rendered. Such an authoritative determination can come only from this Court particularly in the light of the decisions of Federal courts cited at pages 17-20 of the petition holding that the statute deals only with a union-member relationship and does not involve the union-employee relationship.

The opinion of the Court of Appeals recognizes the substantial nature of the problem presented in its observation that "Undoubtedly a substantial argument can be made that active, partisan participation by jobholders in intra-organizational politics is a threat to good administration. Congress, in adopting the Hatch Act, endorsed this view with respect to most federal empolyees." (Pet. 11a, 12a.)

CONCLUSION

For the reasons stated in the petition, as further discussed herein, the petition for a writ of certiorari should be granted.

Respectfully submitted,

PLATO E. PAPPS
1300 Connecticut Avenue, N. W.
Washington 6, D. C.

EDWARD J. HICKEY, JR.
JAMES L. HIGHSAW, JR.
620 Tower Building
Washington 5, D. C.

Counsel for Petitioners

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington 5, D. C.

JOHN PAUL JENNINGS
JENNINGS, HAID, GARTLAND & TILLY
345 World Trade Center
San Francisco 11, California

October 8, 1964